REMARKS

This Amendment is submitted in response to the non-final Office Action of April 30, 2009. Claims 1-23 are pending with Claims 13-23 being withdrawn. Claims 9 and 12 are canceled by this response.

I Restriction Requirement

The Office Action required restriction to one of the following: Group I (Claims 1-12) or Group II (Claims 13-22). Applicant elects Group I (Claims 1-12) without traverse and notes that though it is not required that the target computer of Claim 1 replace the source computer of Claim 1, it is within the scope of Claim 1 when the acquired target computer of Claim 1 replaces the source computer of Claim 1.

II Double Patenting

The Office Action provisionally rejects Claims 1-12 on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-23 of U.S. Patent Application No. 10/329,868 ("the '868 application"). Applicant respectfully disagrees.

The Office Action states that the '868 application is copending. However, a Notice of Abandonment was sent for the '868 application on December 4, 2007. It is respectfully submitted that the '868 application is abandoned and is not co-pending.

For at least the above reasons, it is respectfully requested that these provisional rejections be withdrawn.

III Claim Objections

The Office Action objected to Claims 11 and 12 for being duplicates of each other. Claim 12 is canceled by this response. For at least the above reasons, it is respectfully requested that these objections be withdrawn.

IV Rejections Under 35 U.S.C. §101

The Office Action rejected Claims 1-12 under 35 U.S.C. §101 as being directed to non-statutory subject matter. Applicant respectfully disagrees.

The Office Action states, "In order for a claimed process to be patentable subject matter under 35 U.S.C. §101, it must either: (1) be tied to a particular machine, or (2) transform a particular article to a different state or thing." It is respectfully submitted that Claim 1 satisfies both of the above tests.

Claim 1 recites in part, "...causing a custom target computer to be delivered to said customer or said customer's agent." It is respectfully submitted that the method of Claim 1 is tied to at least the custom target computer. Further, it is respectfully submitted that the method of Claim 1 transforms the custom target computer at least to a different state (i.e., location) by causing it to be delivered to a customer or the customer's agent.

For at least the above reasons, it is respectfully submitted that Claim 1 and its dependent claims are each directed to statutory subject matter, and it is respectfully requested that these rejections be withdrawn.

V Rejections Under 35 U.S.C. §103

The Office Action rejected Claims 1-12 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,442,433 ("Linberg") in view of U.S. Patent No. 6,073,214 ("Fawcett"). Applicant respectfully disagrees.

Linberg discloses a programming unit that is used to program a plurality of implantable medical devices. Linberg also discloses that software updates and component upgrades for the programming unit can be made. However, as acknowledged by the Office Action, Linberg does not disclose or suggest causing a custom target computer to be delivered to said customer or said customer's agent. For this feature, the Office Action relies upon Fawcett, specifically Column 10, lines 43-63.

Fawcett discloses a software updating service. At Column 10, lines 43-63, Fawcett discloses that a user can be provided a list of retailers from which software can be purchased for a computer and that a user can avoid the trouble of traveling to such a retailer by simply downloading the software. This section of Fawcett does not disclose or suggest causing a custom target computer to be delivered to said customer or said customer's agent.

For at least the above reasons, it is respectfully submitted that Claim 1 and its dependent claims are patentably distinguished from Linberg in view of Fawcett and are in condition for allowance.

VI M.P.E.P. §707.07(j)

M.P.E.P. §707.07(j) states:

> "...If the examiner is satisfied after the search has been completed that patentable subject matter has been disclosed and the record indicates that the applicant intends to claim such subject matter, the examiner may note in the Office action that certain aspects or features of the patentable invention have not been claimed and that if properly claimed such claims may be given favorable consideration..."

Applicants respectfully request that the Examiner make Applicants aware of any subject matter disclosed by the present application which the Examiner believes is patentable. By doing so, the Examiner would help expedite prosecution by enabling Applicants to amend the present claims or draft new claims directed to such subject matter.

CONCLUSION

Accordingly, in view of the above remarks it is submitted that the claims are patentably distinct over the cited references and that all the rejections to the claims have been overcome. Reconsideration and reexamination of the above Application is

requested. Based on the foregoing, Applicants respectfully requests that the pending claims be allowed, and that a timely Notice of Allowance be issued in this case. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee that is not covered by an enclosed check please charge any deficiency to Deposit Account No. 50-0463.

Respectfully submitted,

Microsoft Corporation

Date: July 28, 2009

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